



January 25, 2002

## SENATE BILL No. 341

DIGEST OF SB 341 (Updated January 23, 2002 4:52 PM - DI 87)

**Citations Affected:** IC 36-7.

**Synopsis:** Land use. Specifies that review of a land use decision of a legislative body or the board of zoning appeals by certiorari is initiated by filing a petition with the court. Sets forth the persons that a remonstrator must notify of the filing of a petition for writ of certiorari. Provides that an adverse party is not required to be named as a party to the petition for writ of certiorari.

**Effective:** July 1, 2002.

**Clark**

January 8, 2002, read first time and referred to Committee on Governmental and Regulatory Affairs.  
January 24, 2002, reported favorably — Do Pass.

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SB 341—LS 6858/DI 87+



January 25, 2002

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

## SENATE BILL No. 341

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 36-7-4-1003 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1003. (a) Each decision  
3 of the legislative body under section 918.6 of this chapter or the board  
4 of zoning appeals is subject to review by certiorari. Each person  
5 aggrieved by a decision of the board of zoning appeals or the legislative  
6 body may ~~present~~ **file with** the circuit or superior court of the  
7 county in which the premises affected are located, a verified petition  
8 setting forth that the decision is illegal in whole or in part and  
9 specifying the grounds of the illegality. No change of venue from the  
10 county in which the premises affected are located may be had in any  
11 cause arising under this section.  
12 (b) ADVISORY. The person shall ~~present~~ **file** the petition ~~to with~~  
13 the court within thirty (30) days after the date of that decision of the  
14 board of zoning appeals.  
15 (c) AREA. The person shall ~~present~~ **file** the petition ~~to with~~ the  
16 court within thirty (30) days after the ~~entry~~ **date** of that decision of the  
17 board of zoning appeals.

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(d) METRO. The person shall ~~present~~ **file** the petition ~~to~~ **with** the court after the expiration of the period within which an official designated by the metropolitan development commission may file an appeal under section 922 of this chapter but within thirty (30) days after the date of that decision of the board of zoning appeals. However, if the official files an appeal, then only the decision of the metropolitan development commission sitting as a board of zoning appeals is subject to review by certiorari, in accordance with this section. The official or department of metropolitan development may not seek review by certiorari of a decision of a board of zoning appeals or the commission sitting as a board of zoning appeals.

SECTION 2. IC 36-7-4-1005 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1005. (a) On filing a petition for a writ of certiorari with the clerk of the court, the petitioner **for the writ of certiorari shall give notice of the petition as follows:**

**(1) If the petitioner is the applicant or petitioner for the use, special exception, or variance, the petitioner** shall have a notice served by the sheriff of the county on each adverse party as shown by the record of the case in the office of the board of zoning appeals.

**(2) If the petitioner is not the applicant for the use, special exception, or variance and is a person aggrieved by the decision of a board of zoning appeals as set forth in section 1003 of this chapter, the petitioner shall have a notice served by the sheriff of the county on each:**

**(A) applicant or petitioner for the use, special exception, or variance; and**

**(B) owner of the property that is the subject of the application or petition for the use, special exception, or variance.**

The service of the notice by the sheriff on the chairman or secretary of the board of zoning appeals constitutes notice of the filing of the petition to the board of zoning appeals, to the municipality or county, and to any municipal or county official or board charged with the enforcement of the zoning ordinance. No other summons or notice is necessary when filing a petition.

(b) An adverse party under this section is any property owner whose interests are opposed to the petitioner for the writ of certiorari and who appeared at the hearing before the board of zoning appeals either in person or by a written remonstrance or other document that is part of the hearing record. If the petitioner was an unsuccessful appellant in the administrative appeal, or an unsuccessful petitioner or applicant for

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1 a variance, special exception, or special or conditional use, and the  
 2 record shows a written remonstrance or other document opposing the  
 3 interest of the petitioner that contains more than three (3) names, the  
 4 petitioner shall have notice served on the three (3) property owners  
 5 whose names appear first on the remonstrance or document. Notice to  
 6 the other persons named is not required.

7 (c) Notice given under subsection (a) must state:

- 8 (1) that a petition for a writ of certiorari, asking for a review of the  
 9 decision of the board of zoning appeals, has been filed in the  
 10 court;  
 11 (2) the premises affected; and  
 12 (3) the date of the decision.

13 **(d) An adverse party who is entitled to notice of a petition for**  
 14 **writ of certiorari under subsection (a) is not required to be named**  
 15 **as a party to the petition for writ of certiorari.**

16 SECTION 3. IC 36-7-4-1006 IS AMENDED TO READ AS  
 17 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1006. ~~On presentation~~  
 18 ~~of a petition for a writ of certiorari;~~ The court shall direct the board of  
 19 zoning appeals, within twenty (20) days after the date ~~of the petition is~~  
 20 **filed,** to show cause why a writ of certiorari should not issue. If the  
 21 board fails to show to the satisfaction of the court that a writ should not  
 22 issue, then the court may allow a writ of certiorari directed to the board.  
 23 The writ must prescribe the time in which a return shall be made to it.  
 24 This time must not be less than ten (10) days from the date of issuance  
 25 of the writ, and the court may extend the time.

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## COMMITTEE REPORT

Mr. President: The Senate Committee on Governmental and Regulatory Affairs, to which was referred Senate Bill No. 341, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 341 as introduced.)

MERRITT, Chairperson

Committee Vote: Yeas 7, Nays 0.

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